UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

GERALD JOSEPH LOVOI, derivatively on behalf of CVS HEALTH CORPORATION, Plaintiffs, v. KAREN S. LYNCH, FERNANDO AGUIRRE, JEFFREY R. BALSER, C. DAVID BROWN II, ALECIA A. DECOUDREAUX, NANCY-ANN M. DEPARLE, ROGER N. FARAH, ANNE M. FINUCANE, J. SCOTT KIRBY, MICHAEL F. MAHONEY, JEAN-PIERRE MILLON, MARY L. SCHAPIRO, THOMAS F. COWHEY, and SHAWN M. GUERTIN, Defendants, -and- CVS HEALTH CORPORATION, Nominal Defendant.	Case No. **VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Gerald Joseph Lovoi ("Plaintiff"), derivatively on behalf of CVS Health Corporation ("CVS" or the "Company"), brings the following complaint against the Company's board of directors (the "Board") and executive officers for breaches of fiduciary duties and violation of Section 14(a) of the Securities Exchange Act of 1934. Except for allegations specifically pertaining to Plaintiff and Plaintiff's own acts, the allegations in the Complaint are based upon information and belief, which include but are not limited to: (i) the Company's public filings with the United States Securities and Exchange Commission (the "SEC"); (ii) pleadings filed in *Nixon v. CVS Health Corporation, et al.*, 1:214-cv-05303 (S.D.N.Y.) and *Tatone v. CVS Health Corporation, et al.*, 1:24-cv-06771 (S.D.N.Y.); (iii) corporate governance documents available on the Company's website; and (iv) other publicly available information.

NATURE OF THE ACTION

1. This is a stockholder derivative action brought by Plaintiff, a stockholder of CVS, on behalf of the Company against the Defendants. This action alleges breaches of fiduciary duty by the Board and senior executive officers occurring from at least May 3, 2023, to April 30, 2024. During that time the Defendants (as defined herein) caused or allowed CVS to issue or make materially false and misleading statements concerning the Company's financial condition and business operations.

2. CVS operates three main business segments: Health Care Benefits, Health Services, and Pharmacy and Consumer Wellness. While each segment contributes meaningfully to the Company's total revenues, the Health Care Benefits segment has an outsized impact on CVS's financial health. Premiums from insurance plans with the U.S. federal government make up more than half of the Health Care Benefits revenues, and 14% of the Company's total revenues. Typically, CVS used a little more than 80% of premiums to cover medical costs accrued through its insurance plans. If medical costs increased, or more people utilized their insurance plans, that would have a negative impact on operating income for the Health Care Benefits segment, as well as the Company as a whole.

3. Beginning in May 2023, the Defendants allowed executive officers and the Company itself to make false and misleading statements concerning the impact of increased utilization rates on the financial results for the Health Care Benefits segment and the Company. As utilization rates increased, medical costs increased. As the Company cut financial guidance for 2023, it downplayed the significance of the increased utilization rates on the Company's financial health. Officers assured investors and analysts that other financial metrics would offset the increase in medical costs, or that the other business segments would perform well enough to counteract any

negative impact from the increase in utilization. Officers and the Company also declared that the guidance for 2023 accurately reflected the Company's projections on utilization rates and medical costs.

4. On May 1, 2024, CVS disclosed its financial results for the first quarter of 2024. The Company revealed that utilization rates and medical costs continued to increase, and that those increases would have a significant impact on the Company's growth and financial health. The market responded, and CVS's stock price dropped 17% in light of this news.

5. Through this action, Plaintiffs seek to hold the Board and executive officers accountable for making or causing the Company to make false and misleading statements in breach of their fiduciary duties to the Company.

PARTIES

A. Plaintiff

6. Plaintiff Gerald Joseph Lovoi is a current shareholder of CVS and has continuously held CVS stock during all times relevant hereto and is committed to retaining CVS shares through the pendency of this action to preserve her standing. Plaintiff will adequately and fairly represent the interests of CVS and its shareholders in enforcing its rights.

B. Nominal Defendant

7. Nominal Defendant CVS is a corporation organized and existing under the laws of the State of Delaware. The Company's principal executive offices are located at One CVS Drive, Woonsocket, Rhode Island 02895. CVS common stock trades on the NYSE under the ticker symbol "CVS."

C. Individual Defendants

8. Defendant Karen S. Lynch has served as President, CEO and a director of the Company since 2021.

9. Defendant Fernando Aguirre has been a director of the Company since 2018. Defendant Aguirre served on the Audit Committee during the relevant time period.

10. Defendant Jeffrey R. Balser has been a director of the Company since 2022. Defendant Balser served on the Audit Committee during the relevant time period.

11. Defendant C. David Brown II has been a director of the Company since 2007.

12. Defendant Alecia A. DeCoudreaux has been a director of the Company since 2015. Defendant DeCoudreaux served on the Audit Committee during the relevant time period.

13. Defendant Nancy-Ann M. DeParle has been a director of the Company since 2013.

14. Defendant Roger N. Farah has been a director of the Company since 2018.

15. Defendant Anne M. Finucane has been a director of the Company since 2011. Defendant Finucane served on the Audit Committee during the relevant time period.

16. Defendant J. Scott Kirby has been a director of the Company since 2023.

17. Defendant Michael F. Mahoney has been a director of the Company since 2023.

18. Defendant Jean-Pierre Millon has been a director of the Company since 2007. Defendant Millon served on the Audit Committee during the relevant time period.

19. Defendant Mary L. Schapiro has been a director of the Company since 2017. Defendant Schapiro served on the Audit Committee during the relevant time period.

20. Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro are herein referred to as "Director Defendants."

21. Defendant Thomas F. Cowhey has served as the Company's Executive Vice President and Chief Financial Officer since January 2024.

22. Defendant Shawn M. Guertin served as Executive Vice President and Chief Financial Officer of CVS from 2021 to January 2024.

23. Defendants Lynch, Cowhey, and Guertin are herein referred to as "Officer Defendants."

JURISDICTION AND VENUE

24. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's claims raise a federal question under Section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78n(a)(1), and Rule 14a-9 promulgated thereunder, 17 C.F.R. § 240.14a-9.

25. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

26. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

27. Venue is proper in this court under 28 U.S.C. § 1391 because a significant amount of the conduct at issue took place and had an effect in this District and the Defendants have received substantial compensation in this District. The Company's principal executive offices are located in this District.

FURTHER SUBSTANTIVE ALLEGATIONS

A. Company Background

28. CVS is a large health services company in the United States. The Company has more than 9,000 retail pharmacy locations, over 1,000 medical clinics, and is a pharmacy benefits manager with 108 million plan members. In 2023, CVS brought in more than $357.7 billion in revenues, a 10.9% increase from 2022.

29. The Company operates four business segments: Health Care Benefits, Health Services, Pharmacy & Consumer Wellness, and Corporate/Other. The Health Care Benefits segment offers health insurance products such as medical, pharmacy, dental, and behavioral health plans. The Health Services segment manages pharmacy benefit plans and the distribution of prescription drugs through CVS pharmacies. The Pharmacy & Consumer Wellness segment covers pharmacy services, including filling prescriptions and administering vaccinations, as well as the products sold in the Company's retail locations. The Corporate/Other segment covers administrative expenses and products the Company has closed to new customers.

30. The United States government is a major customer of the Company's Health Care Benefits segment. At least half of the segment's revenues in 2021, 2022, and 2023 were derived from premiums on Medicare plans and federal employee-related benefit programs. While CVS can determine the pricing for commercial insurance plans at the beginning of the policy period, insurance plans with the federal government are priced by the U.S. Centers for Medicare & Medicaid Services or state government agencies (for Medicaid plans). Medicare plans generate higher revenues than commercial plans, but they also generate higher costs.

B. CVS's False and Misleading Statements

31. From at least May 3, 2023, through April 30, 2024, CVS and its executive officers made materially false and misleading statements about the impact of increased utilization in Medicare plans on the Health Care Benefits segment's financial performance.

32. On May 3, 2023, the Company released its financial results for the first quarter of 2023. The Company announced an increase in total revenues, from $76.8 billion in the first quarter of 2022 to $85.2 billion in the first quarter of 2023. For the Health Care Benefits segment, the Company announced a 12% increase in revenues. According to the press release:

- Total revenues increased 12.1% for the three months ended March 31, 2023 compared to the prior year driven by growth across all product lines.
- Adjusted operating income decreased slightly in the three months ended March 31, 2023 compared to the prior year primarily driven by the continued progression towards normalized utilization and lower impact from favorable development of prior-years' health care cost estimates in the three months ended March 31, 2023 compared to the prior year. These decreases were largely offset by higher net investment income and membership growth across all product lines in the three months ended March 31, 2023.
- The MBR increased to 84.6% in the three months ended March 31, 2023 compared to 83.4% in the prior year reflective of the continued progression towards normalized utilization and lower impact from favorable development of prior-years' health care cost estimates in the three months ended March 31, 2023 compared to the prior year.
- Medical membership as of March 31, 2023 of 25.5 million increased 1.1 million members compared with December 31, 2022, reflecting increases across all product lines including an increase of approximately 900,000 members related to the individual exchange business within the Commercial product line.
- The segment experienced favorable development of prior-years' health care cost estimates in its Government Services and Commercial businesses during the three months ended March 31, 2023, primarily attributable to fourth quarter 2022 performance.
- Prior years' health care costs payable estimates developed favorably by $693 million during the three months ended March 31, 2023. This development is reported on a basis consistent with the prior years' development reported in the health care costs payable table in the Company's annual audited financial statements and does not directly correspond to an increase in 2023 operating results.

33. The press release issued that day also provided a revision to previously provided guidance for 2023:

> **2023 Full-Year Guidance**
>
> The Company revised its full-year 2023 GAAP diluted EPS guidance range to $6.90 to $7.12 from $7.73 to $7.93 and its full-year 2023 Adjusted EPS guidance range to $8.50 to $8.70 from $8.70 to $8.90. The Company also confirmed its full-year 2023 cash flow from operations guidance range of $12.5 billion to $13.5 billion.
>
> The adjustments between full-year 2023 GAAP diluted EPS and Adjusted EPS include amortization of intangible assets, net realized capital losses, a loss on assets held for sale, acquisition-related transaction and integration costs related to the acquisitions of Signify Health, Inc. ("Signify Health") and Oak Street Health, Inc. ("Oak Street Health"), office real estate optimization charges and the corresponding income tax benefit or expense related to the items excluded from adjusted income attributable to CVS Health.

34. That same day, CVS filed a Form 10-Q with the SEC with the financial results for the first quarter of 2023. The Form 10-Q stated:

> **Overview of Current Trends**
>
> We also face trends and uncertainties specific to our reportable segments, certain of which are summarized below and also discussed in the review of our segment results. For the remainder of the year, the Company believes you should consider the following important information:
>
> - The Health Care Benefits segment is expected to continue to benefit from Medicare and Commercial membership growth, partially offset by declines in Medicaid due to the impact of redeterminations in 2023.
> - The Health Services segment is expected to continue to benefit from the Company's ability to drive further improvements in purchasing economics and strong pharmacy network volume. These increases are expected to be partially offset by continued client price improvements and regulation of pharmacy pricing, as well as a recent expansion of pharmaceutical manufacturer policies restricting 340B discounts. The dilutive impact of the acquisition of Oak Street Health, Inc. ("Oak Street Health") is expected to be partially offset by the accretive impact of the acquisition of Signify Health, Inc. ("Signify Health") during the remainder of the year.
> - The Pharmacy & Consumer Wellness segment is expected to continue to benefit from increased prescription volume and improved generic drug purchasing,

partially offset by continued pharmacy reimbursement pressure and lower contributions from coronavirus disease 2019 ("COVID-19") vaccinations, diagnostic testing and OTC test kits as COVID-19 transitions to an endemic stage.

- The Company is expected to benefit from the continuation of its enterprise-wide cost savings initiatives, which aim to reduce the Company's operating cost structure in a way that improves the consumer experience and is sustainable. Key drivers include:
  - Investments in digital, technology and analytics capabilities that will streamline processes and improve outcomes,
  - Implementing workforce and workplace strategies, and
  - Deploying vendor and procurement strategies.
- The Company expects changes to its business environment to continue as elected and other government officials at the national and state levels continue to propose and enact significant modifications to public policy and existing laws and regulations that govern or impact the Company's businesses.

* * *

Adjusted operating income

- Adjusted operating income decreased slightly in the three months ended March 31, 2023 compared to the prior year primarily driven by the continued progression towards normalized utilization and lower impact from favorable development of prior-years' health care cost estimates in the three months ended March 31, 2023 compared to the prior year. These decreases were largely offset by higher net investment income and membership growth across all product lines in the three months ended March 31, 2023.

35. CVS held a conference call with investors and analysts on May 3, 2023 to discuss the financial results released that day. In his opening remarks, Defendant Guertin stated:

Starting with Health Care Benefits. We delivered strong revenue growth versus the prior year. First quarter revenue of $25.9 billion increased by 12.1% year-over-year. Membership grew over 4% on a sequential basis reflecting significant growth in Individual Exchange members as well as increases across all other product lines.

Adjusted operating income of $1.8 billion in the quarter declined slightly versus the prior year. This was driven by the expected return to more normalized utilization as the effect of COVID waned and by the lower impact from prior year reserve development. These decreases were largely offset by higher net investment income and membership growth across all product lines during the quarter.

> Our medical benefit ratio of 84.6% increased 120 basis points year-over-year reflecting more normalized utilization including the impact of higher flu as compared to last year and modestly lower impact from favorable prior-year development. Our assumption was always that our 2023 medical cost seasonality by business would look more like pre-pandemic patterns. We believe that the consensus estimates for quarterly MBR may have relied too heavily on recent experience that was impacted by COVID-19.
>
> Overall utilization trends remain in-line with expectations. Consolidated days claims payable at the end of the quarter was 48.1, down 3.2 days sequentially. This is more in-line with historical levels of days claims payable for the first quarter in pre-pandemic periods. Overall, we remain confident in the adequacy of our reserves.
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> * * *
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> Turning now to updated guidance based on our new segments. . . . For the Health Care Benefits segment, we now expect adjusted operating income of $6.39 billion to $6.52 billion, benefiting from higher net investment income in the first quarter of 2023 and prior period development. We continue to take a prudent and cautious stance with respect to our Individual Exchange business inside our full year outlook.
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> * * *
>
> We also want to highlight our expectations for quarterly MBRs. We continue to expect the year-on-year increases in MBR to be higher in the first half than the second half. This dynamic is due to COVID-driven lower utilization trends in the first half of 2022. We expect the MBR progression in the second quarter of this year to look similar to the trend in the first quarter.

36. Later in that call, an analyst asked Defendant Guertin about the utilization expectations in the Health Care Benefits segment. Defendant Guertin responded:

> Yeah, I'll have [Defendant Finke] talk a little bit more about the specifics on utilization, but specific to the MBR discussion, just to be clear, it may mathematically work out to be what you said, but we expect a similar kind of year-over-year increase in Q2 MBR and then sort of a leveling out for kind of Q3, Q4 and I think this has more to do I think with how 2022 manifested itself, in terms of how COVID was playing out, and I think that's why that's going to sort of drive that pattern.
>
> We have been pricing all along for a return to normal utilization across the product portfolio. I think we're getting closer and closer to that all the time, certainly with some of what we've seen in first quarter, but I can have Dan comment a little bit

more, but as you mentioned, overall, we thought it was in-line with our expectations and our pricing, so Dan?

[Defendant Finke]: Yeah, thanks, Shawn. As Shawn said, we've been expecting the quarter-over-quarter increases towards a normalized level of utilization and we certainly continued to see that in the first quarter. In-patient volume has continued to be slightly below normalized levels. We also saw some transitions of care to some alternative sites of care out-patient ambulatory and obviously, we think that's a good thing offering alternative sites of care, which is lower overall costs, so we see that trend continue.

Mental health remains above pre-pandemic levels. We also think that's a good thing because demand is being met. And then general services like physician services, ambulatory, ER and specialists are all generally at normalized levels and all of that, like Shawn said, is priced within expectations. When you think about the lines of business the way I think about it is Commercial and Medicare in-line with expectations, generally at normalized levels, and Medicaid is still being somewhat favorable.

37. Defendant Guertin attended the Bernstein Strategic Decisions Conference on May 31, 2023, where he spoke with analyst Lance Wilkes. Defendant Guertin was asked about utilization and pricing in the Health Care Benefits segment, and he responded:

What I would say about utilization is we've now gone in many ways back to where we have always been in managed care, which is it's really the matching of pricing and utilization that makes a difference in the long run. Utilization is up. We assumed it would be up in our pricing. And where in the first quarter what I would say – if you went back and you looked at last year, commercial had come pretty far back, was pretty close to what we thought was a normalized baseline. You still saw softness in Medicare and Medicaid last year.

I would say what's most obvious in the first quarter of this year is you've seen Medicare get a lot closer to that normalized baseline. Again, Medicaid actually still looks below. And in Medicare, it's some of the areas that you've all heard about with some of the public comps. You do see it in outpatient and ambulatory procedures and things like that more than inpatient, as an example. Inpatient still looks a little reduced to the baseline actually.

But I think you see Medicare kind of coming back. And so, we assumed – we've continued to assume a return to a normalized baseline, and I think our first quarter saw that that did happen more so in Medicare than what we've seen the last couple of years. But in anticipation for this, we did send out an 8-K and say we continue to believe that our pricing assumption is – or the utilization is consistent with the pricing assumptions we've made in the product. But it's definitely one of those

things that has been a margin for error, if you will, in prior years with everything that's happened with COVID, that's a little bit different in the first quarter.

38. On August 2, 2023, the Company released its financial results for the second quarter of 2023. The Company announced a 10% increase in total revenues for the quarter, as well as for the first half of the year. The Health Care Benefits segment saw an increase of 17.6% year-over-year in total revenues, from $22.7 billion in 2022 to $26.7 billion in 2023. According to the press release:

- Total revenues increased 17.6% for the three months ended June 30, 2023 compared to the prior year driven by growth across all product lines.
- Adjusted operating income decreased 19.9% for the three months ended June 30, 2023 compared to the prior year, reflecting increased outpatient utilization in Medicare Advantage when compared with pandemic influenced utilization levels in the prior year, as well as the impact of lower year-over-year prior period development. These decreases were partially offset by higher net investment income in the three months ended June 30, 2023 compared to the prior year and the continuing benefit of operating expense leverage.
- The MBR increased to 86.2% in the three months ended June 30, 2023 compared to 82.7% in the prior year driven by increased outpatient utilization in Medicare Advantage when compared with pandemic influenced utilization levels in the prior year, as well as the impact of lower year-over-year prior period development.
- Medical membership as of June 30, 2023 of 25.6 million increased 121 thousand members compared with March 31, 2023, reflecting increases in the Commercial and Medicare product lines. These increases were partially offset by a decline in the Medicaid product line, primarily attributable to the resumption of Medicaid redeterminations following the expiration of the public health emergency.
- The segment experienced unfavorable development of prior-periods' health care cost estimates in its Government Services business during the three months ended June 30, 2023, primarily attributable to first quarter 2023 Medicare Advantage performance. This was partially offset by favorable development of prior-periods' health care cost estimates in the segment's Commercial business during the three months ended June 30, 2023.
- Prior years' health care costs payable estimates developed favorably by $612 million during the six months ended June 30, 2023. This development is reported on a basis consistent with the prior years' development reported in the health care costs payable table in the Company's annual audited financial statements and does not directly correspond to an increase in 2023 operating results.

39. Again, the Company revised its guidance for 2023. As stated in the press release issued that day:

> **2023 Full-year guidance**
>
> The Company revised its full-year 2023 GAAP diluted EPS guidance range to $6.53 to $6.75 from $6.90 to $7.12 and confirmed its full-year 2023 Adjusted EPS guidance range of $8.50 to $8.70. The Company also confirmed its full-year 2023 cash flow from operations guidance range of $12.5 billion to $13.5 billion.
>
> The adjustments between full-year 2023 GAAP diluted EPS and Adjusted EPS include amortization of intangible assets, net realized capital losses, acquisition-related transaction and integration costs related to the acquisitions of Signify Health and Oak Street Health, a restructuring charge, office real estate optimization charges, a loss on assets held for sale and the corresponding income tax benefit or expense related to the items excluded from adjusted income attributable to CVS Health.

40. That same day, CVS filed a Form 10-Q with the SEC with the financial results for the second quarter of 2023. The Form 10-Q stated:

> **Overview of Current Trends**
>
> We also face trends and uncertainties specific to our reportable segments, certain of which are summarized below and also discussed in the review of our segment results. For the remainder of the year, the Company believes you should consider the following important information:
>
> - The Health Care Benefits segment is expected to experience higher than previously expected medical cost trend in Medicare Advantage for the remainder of 2023, while expected medical cost trends remain consistent with pricing in Commercial and Medicaid. The segment is expected to benefit from continued membership growth in Commercial, primarily related to the individual exchange business.
> - The Health Services segment is expected to continue to benefit from the Company's ability to drive further improvements in purchasing economics, which leads to lower pharmacy costs for our customers, and pharmacy network volume. These increases are expected to be partially offset by continued client price improvements and the evolving regulation of pharmacy pricing, as well as pharmaceutical manufacturer policies restricting 340B discounts. The dilutive impact of the acquisition of Oak Street Health, Inc. ("Oak Street Health") is expected to be partially offset by the accretive impact of the acquisition of Signify Health, Inc. ("Signify Health") during the remainder of the year.

- The Pharmacy & Consumer Wellness segment is expected to be impacted by continued pharmacy reimbursement pressure, lower contributions from coronavirus disease 2019 ("COVID-19") vaccinations, diagnostic testing and OTC test kits as COVID-19 continues to transition to an endemic state, as well as the expected impact of softening economic conditions on consumer spending and behaviors. The segment is expected to continue to benefit from increased prescription volume and improved generic drug purchasing.

- The Company is expected to benefit from the continuation of its enterprise-wide cost savings initiatives, which aim to reduce the Company's operating cost structure in a way that improves the consumer experience and is sustainable. Key drivers include:
  - Investments in digital, technology and analytics capabilities that will streamline processes and improve outcomes,
  - Implementing workforce and workplace strategies, including the enterprise-wide restructuring program initiated in the second quarter of 2023, and
  - Deploying vendor and procurement strategies.

- The Company expects changes to its business environment to continue as elected and other government officials at the national and state levels continue to propose and enact significant modifications to public policy and existing laws and regulations that govern or impact the Company's businesses.

* * *

Adjusted operating income

- Adjusted operating income decreased $382 million, or 19.9%, in the three months ended June 30, 2023 compared to the prior year, reflecting increased outpatient utilization in Medicare Advantage when compared with pandemic influenced utilization levels in the prior year, as well as the impact of lower year-over-year prior period development. These decreases were partially offset by higher net investment income in the three months ended June 30, 2023 compared to the prior year and the continuing benefit of operating expense leverage.

41. CVS held a conference call with investors and analysts on August 2, 2023 to discuss the financial results released that day. In her opening remarks, Defendant Lynch stated:

> Turning to our performance highlights for the quarter. In our Health Care Benefits segment, we grew revenues to $26.7 billion, an increase of nearly 18% and delivered adjusted operating income of $1.5 billion. Medical membership in the second quarter was 25.6 million, an increase of 1.2 million members versus the prior year, reflecting broad-based growth including individual exchange, Medicare and commercial membership.

For our core commercial membership, this quarter marks the eighth consecutive quarter of membership gains. This growth reflects our differentiated product offering that address the total cost of care and the whole health of a member through our integrated solutions.

Medical cost trends were well-controlled in our Commercial and Medicaid books of business. Consistent with the broader industry, elevated medical costs emerged in our Medicare Advantage business, which became apparent in the latter part of the quarter. The primary driver of these elevated medical costs was greater than expected utilization in outpatient settings. Shawn will discuss these trends in more detail.

In Medicaid, the state of Oklahoma awarded us a new statewide Medicaid contract beginning in April 2024. That'll add approximately 200,000 members. This win demonstrates our market-leading ability to comprehensively support Medicaid populations through our deep local relationships, investment in clinical programs and integrated well-being solutions.

42. In his opening remarks, Defendant Guertin stated:

Shifting to the details for our Health Care Benefits Segment. We delivered strong revenue growth versus the prior year. Second quarter revenue of $26.7 billion increased by 17.6% year-over-year, reflecting growth across all product lines. Membership grew to 25.6 million, an increase of 121,000 members sequentially, reflecting increases in our individual exchange and Commercial businesses, partially offset by the impact of Medicaid redeterminations.

Adjusted operating income of $1.5 billion in the quarter declined approximately 20% versus the prior year. This decline was driven by a higher-than-expected medical benefit ratio, partially offset by higher net investment income and strong execution on operating cost management.

Our medical benefit ratio of 86.2% increased 350 basis points year-over-year, reflecting higher-than-expected Medicare Advantage utilization in the second quarter. These trends were primarily driven by higher utilization in the outpatient setting, as well as dental and behavioral health. We also recognized higher utilization levels in the first quarter in prior-year, resulting in lower year-over-year prior period development in the quarter. It is important to note that utilization in our other lines of business, including individual exchange, Commercial and Medicaid, remain generally in line with our pricing expectations.

Days' claims payable at the end of the quarter was 46.9, down 1.2 days sequentially. This decline was almost entirely driven by the impact of increased Medicaid pass-through payments in the quarter. Excluding this impact, DCP was stable, And overall, we remain confident in the adequacy of our reserves.

* * *

> Turning now to our outlook for 2023. We are reaffirming our adjusted earnings per share guidance of $8.50 to $8.70. This guidance reflects our performance through the second quarter as well as a higher-than-expected Medicare Advantage medical cost trend for the remainder of 2023, offset by strength in our Pharmacy Services business within our Health Service Segment.
>
> In the Health Care Benefits segment, we now expect our 2023 medical benefit ratio to fall at the high-end of our previous range of 84.7%, plus or minus 50 basis points, reflecting impact of higher Medicare Advantage utilization. While there is uncertainty surrounding the duration of this utilization spike, our 2023 guidance now prudently assumes that these medical cost trends will remain elevated for the rest of 2023. This update also results in a change to our guidance for adjusted operating income, which we now expect to fall in a range of $5.99 billion to $6.12 billion. While we are encouraged by trends in our individual exchange business, this guidance continues to reflect a prudent and cautious stance for that business.

43. Later in the call, in response to a question concerning uncertainty with Medicare Advantage utilization, Defendant Guertin and Executive Vice President, Daniel P. Finke ("Finke") discussed the utilization rate for Medicare versus commercial insurance plans and Medicaid:

> [Defendant Guertin]:
> As I mentioned in the prepared remarks, our MBR was up 350 basis points year-over-year. It's really important to look at and recall that last quarter we said we expected Q2 MBR to be up year-over-year. One of the main drivers in that is we printed 82.7% last year in the second quarter so there's a lot to do here with the starting point.
>
> Having said that, and allowing for that, Q2 did end up coming in higher than we expected and the real driver here is Medicare Advantage. And it's also important to keep in mind that Medicare is more than 50% of our premium revenue now. As I stated, I want to be clear that Commercial, Medicaid and exchange all performed consistent or even slightly better than our expectations in the quarter, but as we closed the month of May in mid-June, it became apparent that the Medicare costs were higher than we had anticipated in Q1 and that pressure was continuing into the second quarter. And the real driver remains the outpatient categories that we and others have been discussing, so let me have Dan talk a little bit about what we saw in Aetna and I'll have – Mike will follow that up with what we saw in Oak Street. And I'll talk come back and talk a little bit about how we've prepared our guidance for 2023 and 2024 in light of this.
>
> [Finke]:

Yeah, thanks, Shawn. So, I think it's important to note that our Commercial and Medicaid lines of business were largely in-line with expectations. And as reported more broadly in the industry, we did experience higher than anticipated outpatient utilization in Medicare. This is likely due to some of these services that have been postponed by our seniors not feeling comfortable accessing the health care system during the pandemic. You can think about this as outpatient orthopedic procedures, hips and knees, some cardiac procedures, a little bit of increase in dental, and we're still seeing some continued levels of elevated mental health use.

Again, specific to Medicare and outpatient services, our inpatient volumes remain lower than our normalized levels. And that's the same across all lines of business, so it's something we're closely watching.

* * *

[Defendant Guertin]: So turning back to 2023 first, as I mentioned, Medicare did come in probably about 220 basis points worse than expected for the quarter. Given the way costs have emerged, it's more instructive to look I think at the first half of the year, which is off 100, 110 basis points versus our guidance expectation.

As Dan mentioned, there are aspects of this that make – that some of this could be from a pent-up demand bubble involving discretionary and deferrable services, which, if true, would potentially run its course and lessen over time. And some preliminary July data does show some of that improvement; however, at this stage, in the absence of any compelling evidence to the contrary, we think it's appropriate to be cautious in our outlook and have assumed that the 100 basis points of pressure observed in the first half of 2023 persists through the second half of the year. The result of this is what I mentioned in my prepared remarks, that the HCB MBR would be up about 50 basis points at the high-end of our guidance range.

In terms of 2024, 2024 will come down to two things. Where does the 2023 year settle out, which serves as the baseline to go into 2024, and then what level of trend do we experience off that baseline? Our 2024 MA bid did contemplate a degree of higher utilization, but if trends persist at the levels we've experienced in the first half, as contemplated in our current guidance, we will have already consumed that higher utilization assumption. If a higher level of medical cost trend then persists again in 2024, or, said differently, if we don't see an abatement in medical cost trend, we would then be pressured on our bid assumptions.

In the absence of clear indicators that utilization is abating and out of an abundance of caution, our revised 2024 guidance assumes that we have an incremental headwind in 2024 over our revised 2023 guidance baseline. To the extent utilization does abate, and costs develop more favorably in 2023 than we project, that could serve as upside to our outlook for both 2023 and 2024.

44. Later in the call, Defendant Guertin was asked about medical costs in Medicare plans and the impact on the guidance for 2023. Defendant Guertin responded:

> Yeah, there's a few pieces going on in the quarter that are worth calling out. I did mention one. Obviously, we had Medicaid pass-throughs. That sort of has pushed on the MBR a bit in the quarter. We actually did have unfavorable PYD this quarter, so we recognized that in the quarter. That's sort of pushing the number, but the biggest thing that's driving our guidance increase for the year is the change in outlook on our Medicare MBR. And that, like I said, for the quarter, is probably off a little more than 200 basis points. And I think it's more instructive, as I mentioned, to look at that for the first half and that's largely what we've assumed. So if you look at HCB going down about $400 million of adjusted operating income, obviously there's other moving parts under the surface, but most of that's the 50 basis points on the overall HCB MBR.
>
> Again, the other lines of business are largely in line, if not even a little better than our expectations on HCB. Offsetting that, obviously, was our increase in the Health Services segment, driven by Pharmacy Services. That is about $500 million better. And again, that is driven by sound fundamental performance that Karen and David discussed. And you'll recall that we did talk about the underlying Pharmacy Services performance in Q1 was strong. And we've now carried that strong first half performance for the full year. And as was mentioned earlier in response to the question, we have decreased our outlook on PCW by about $100 million, considering the impacts we observed towards the end of the second quarter, softening consumer demand in particular we talked about, so those are the moving pieces. Inside overall AOI is pretty much flat to where we were, but those are the moving pieces under the covers.

45. Defendant Guertin stated the following in response to a later question about the impact of medical costs in Medicare plans on the Company's guidance for 2023:

> On 2024 guidance, you're correct. There are really, I would say, three kind of performance items, some of which have a lot to do with the external environment and then obviously the one decision. The positive item, obviously, is we do expect some of the outperformance in Pharmacy Services that we're experiencing in 2023 will pull-through favorably into our 2024 performance.
>
> I would note that not all this favorability will pull-through as it will naturally work its way into client pricing as contracts reset in 2024, so you can see the magnitude of our increase for this year. It's obviously not that much, because we're not going to pull all that through, but it's a meaningful positive item for next year.
>
> Similarly, I think on the headwind side, the largest provision we've made in our guidance has to do with the Medicare Advantage performance. We've sort of sized

> the impact of that for this year and sort of have made provision for potential headwind on that. So I think you can kind of get in the neighborhood there. That would be the biggest other one.
>
> And then the other one is in PCW, we've made some provision for the softening consumer demand to persist into next year, as well as potentially more decline in COVID for next year. We have factored that into our guidance. And as I was mentioning on the previous question, we've built in the full effect of the Oak Street acceleration as well. Obviously, that's a choice we're making and an investment in the future.

46. On September 12, 2023, Defendants Lynch and Guertin spoke at the Morgan Stanley Global Healthcare Conference. In response to a question about increased utilization levels, Defendant Guertin stated:

> Yeah. Yeah. So, let's just remind on expectations. We had certainly seen a certain level of utilization pressure in the first half. For 2023, we largely assumed that that would persist for the balance of this year. And then for 2024, we carried that pressure through and added an incremental amount of pressure potentially for 2024. So, that's what we had built into the expectations we shared with you on our last earnings call.
>
> I would say a couple of months into the quarter, we have continued to see those pressures persist and not abate in the quarter. And it remains to be seen again how [indiscernible] (00:11:48) the year plays out and because we're seeing it in many of the same categories that we saw in the first half of the year that there's nothing new there, but it is persisting at high levels.
>
> And so, I would say I think in specific to our HCB business, I think it's – we'll probably be at, at least the high end of our MBR guidance, maybe I think likely a little bit higher than that. But overall, we feel very good about our guidance position for going forward.
>
> For 2023, our Pharmacy Services businesses continue to be strong. Our Retail Business is tracking well. Net investment income has continued to be a positive. So, I'm comfortable with our guidance for 2023. But I think inside HCB, we – if this continues to persist again at the level we've seen for the first two months, we probably have some pressure on our MBR guidance.
>
> But again, in the context of this I wanted to – important to realize we did also assume not only this pressure but some incremental pressure for 2024 in our outlook. And we feel that two months, that's still intact.

47. On November 1, 2023, the Company released its financial results for the third quarter of 2023. The Company announced a 10.6% increase in total revenues from the third quarter of 2022, as well as increases in operating income and diluted earnings per share. The Health Care Benefits segment also saw a year-over-year increase in total revenues, from $22.4 billion in 2022 to $26.2 billion in 2023. According to the press release:

- Total revenues increased 16.9% for the three months ended September 30, 2023 compared to the prior year driven by growth across all product lines.
- Adjusted operating income decreased 6.4% for the three months ended September 30, 2023 compared to the prior year reflecting increased utilization in Medicare Advantage, including the impact of lower year-over-year prior period development, partially offset by higher net investment income in the three months ended September 30, 2023 compared to the prior year.
- The MBR increased to 85.7% in the three months ended September 30, 2023 compared to 83.4% in the prior year driven by the impact of lower year-over-year prior period development and increased utilization in Medicare Advantage, including outpatient and supplemental benefits such as dental and behavioral health, as well as over-the-counter ("OTC") and flex cards, compared to the prior year.
- Medical membership as of September 30, 2023 of 25.7 million increased 54 thousand members compared with June 30, 2023, reflecting increases in the Commercial and Medicare product lines. These increases were partially offset by a decline in the Medicaid product line, primarily attributable to the resumption of Medicaid redeterminations following the expiration of the public health emergency.
- During the three months ended September 30, 2023, the segment experienced modestly unfavorable development of prior-periods' health care cost estimates in its Commercial business, primarily attributable to a prior period provider settlement. This experience was substantially offset by favorable development in its Government Services business.
- Prior years' health care costs payable estimates developed favorably by $665 million during the nine months ended September 30, 2023. This development is reported on a basis consistent with the prior years' development reported in the health care costs payable table in the Company's annual audited financial statements and does not directly correspond to an increase in 2023 operating results.

48. Again, the Company revised its guidance for 2023. As stated in the press release issued that day:

2023 Full-year guidance

> The Company revised its full-year 2023 GAAP diluted EPS guidance range to $6.37 to $6.61 from $6.53 to $6.75 and confirmed its full-year 2023 Adjusted EPS guidance range of $8.50 to $8.70. The Company also confirmed its full-year 2023 cash flow from operations guidance range of $12.5 billion to $13.5 billion.
>
> The adjustments between full-year 2023 GAAP diluted EPS and Adjusted EPS include amortization of intangible assets, net realized capital losses, acquisition-related transaction and integration costs related to the acquisitions of Signify Health and Oak Street Health, restructuring charges, office real estate optimization charges, a loss on assets held for sale and the corresponding income tax benefit or expense related to the items excluded from adjusted income attributable to CVS Health.

49. That same day, CVS filed a Form 10-Q with the SEC with the financial results for the third quarter of 2023. The Form 10-Q stated:

> **Overview of Current Trends**
>
> We also face trends and uncertainties specific to our reportable segments, certain of which are summarized below and also discussed in the review of our segment results. For the remainder of the year, the Company believes you should consider the following important information:
>
> - The Health Care Benefits segment is expected to experience higher than previously expected medical cost trend in Medicare Advantage for the remainder of 2023 and is expected to be impacted by higher-than-expected Public Exchange growth. Medical cost trends remain consistent with pricing in Commercial and Medicaid.
> - The Health Services segment is expected to continue to benefit from the Company's ability to drive further improvements in purchasing economics, which leads to lower pharmacy costs for our customers, and pharmacy network volume. These increases are expected to be partially offset by continued client price improvements and the evolving regulation of pharmacy pricing, as well as pharmaceutical manufacturer policies restricting 340B discounts. The dilutive impact of the acquisition of Oak Street Health, Inc. ("Oak Street Health") is expected to be partially offset by the accretive impact of the acquisition of Signify Health, Inc. ("Signify Health") during the remainder of the year.
> - The Pharmacy & Consumer Wellness segment is expected to benefit from higher than previously expected contributions from seasonal immunizations. The segment anticipates lower-than-expected prescription volume in the remainder of 2023, primarily attributable to Medicaid redeterminations.
> - The Company is expected to benefit from the continuation of its enterprise-wide cost savings initiatives, which aim to reduce the Company's operating cost

structure in a way that improves the consumer experience and is sustainable. Key drivers include:

- Investments in digital, technology and analytics capabilities that will streamline processes and improve outcomes,
- Implementing workforce and workplace strategies, including the enterprise-wide restructuring program initiated in the second quarter of 2023, and
- Deploying vendor and procurement strategies.

- The Company expects changes to its business environment to continue as elected and other government officials at the national and state levels continue to propose and enact significant modifications to public policy and existing laws and regulations that govern or impact the Company's businesses.

* * *

Adjusted operating income

- Adjusted operating income decreased $105 million, or 6.4%, in the three months ended September 30, 2023 compared to the prior year reflecting increased utilization in Medicare Advantage, including the impact of lower year-over-year prior period development, partially offset by higher net investment income in the three months ended September 30, 2023 compared to the prior year.

50. CVS held a conference call with investors and analysts on November 1, 2023 to discuss the financial results released that day. In his opening remarks, Defendant Cowhey stated:

> Shifting to the details for our Health Care Benefits segment, we delivered strong revenue growth versus the prior year. Third quarter revenue of $26.3 billion increased nearly 17% year-over-year, reflecting growth across all product lines, but primarily attributable to Medicare and our Individual Exchange products. Membership grew to 25.7 million, an increase of 54,000 members sequentially, reflecting growth in our Individual Exchange and Medicare businesses, partially offset by the impact of Medicaid redeterminations.
>
> Adjusted operating income of $1.5 billion in the quarter declined approximately 6% versus the prior year. This decline was driven by a higher medical benefit ratio, partially offset by higher net investment income. Our medical benefit ratio of 85.7% increased 230 basis points from the prior-year quarter, primarily reflecting lower prior-period development, as well as higher Medicare Advantage utilization inside the quarter. Utilization pressure was primarily attributable to the categories Karen highlighted earlier, including outpatient and supplemental benefits such as dental, behavioral health, OTC and flex cards.
>
> Further, we also experienced Individual Exchange growth in the special enrollment period that exceeded our expectations. These members, particularly when added

late in the year, will drive a higher MBR. As a result, our higher Individual Exchange growth is also contributing to our updated MBR guidance for the full year. We continue to closely watch utilization trends in our other lines of business, but at this stage, we have not observed any other trends that we would consider inconsistent with our total expectations.

* * *

Turning now to our full-year outlook for 2023. We are reaffirming our adjusted EPS of $8.50 to $8.70. This primarily reflects our performance through the third quarter and the continuation of higher Medicare Advantage medical cost trend for the remainder of 2023 offset by strength in our Pharmacy & Consumer Wellness and Health Services segments.

In the Health Care Benefits segment, we now expect our 2023 medical benefit ratio to be approximately 86% primarily driven by the previously mentioned impact of higher Medicare Advantage utilization, as well as the impact of higher-than-expected Individual Exchange growth during the special enrollment period. As a result, we now expect adjusted operating income for the segment to be in a range of $5.63 billion to $5.76 billion.

Our Individual Exchange business is expected to reduce adjusted operating earnings in 2023 largely a function of late-year growth. However, this business is now poised to reach an annualized run rate of more than $6 billion of revenue and we are well positioned to earn a positive margin in this business in 2024 based on specific actions our teams are implementing including pricing adjustments.

* * *

Before I conclude my prepared remarks, I want to give you an update on headwinds and tailwinds for 2024. Starting with the headwinds, as we previously discussed the decline in our Star Ratings for benefit year 2024 will pressure our Medicare Advantage margins. We now expect the impact to be closer to the low end of our previously communicated range of $800 million to $1 billion. We continue to expect the current level of elevated utilization in our Medicare Advantage book to persist and out of an abundance of caution are maintaining a provision for further utilization pressure in 2024.

51. When asked about medical cost trends in Medicare and the general thoughts on the Health Care Benefits segment's performance over the next year, Defendant Cowhey stated:

So, you'll remember on our second quarter call we discussed that we were seeing 100 to 110 bps of Medicare pressure in the first half, and that was driven by higher than expected utilization in outpatient and some supplemental benefits such as dental and behavioral health. We carried forward that pressure into the second half

resulting in an increase for the total company of about 50 bps to the total year MBR guide. We further indicated that we had captured a portion of the outpatient trend pressure in our bids in 2024 and that the remaining pressure we did not incorporate was reflected in the 2024 guide. We also put a placeholder in for additional utilization in our 2024 preliminary guidance range.

So as you look then to the third quarter, we're experiencing higher utilization than we anticipated. The main driver of this pressure continues to be Medicare Advantage, but a less impactful notable driver is continued strong growth in the Individual Exchange product through the SEP. So this SEP membership particularly when it's added late in the year carries a higher than average MBR. So if you look specifically then at Medicare, we've continued to see elevated utilization in outpatient, including additional pressure in the second quarter. We've also seen incremental pressure in supplemental benefits in the third quarter, particularly dental, behavioral health and OTC and flex cards.

So OTC and flex cards is a differentiator for our 2023 plan design but it's also an important part of how we're planning to grow in 2024 and part of our bid strategy. The cards, a lot of members have fixed amount of cash typically on a quarterly basis that they can use for OTC as well as food among other purchases. To-date, we've seen meaningfully higher levels of utilization in the use of these cards than we had anticipated in our 2023 pricing and in our initial outlook.

If you roll that forward to the full-year guide, we've raised the MBR by 75 basis points to 80 basis points. 10 basis points to 15 basis points is primarily related to the exchange product growth in the SEP and its impact on our MBR. The remaining 65 bps is related to Medicare Advantage where we've presumed that the elevated level of trend we observed in the third quarter persists into the fourth quarter. Net of some revenue offsets, that represents about $550 million of pressure in Medicare.

It's important to note, though, as you look at our full-year guidance, reduction in HCB, there are about $250 million of favorable non-MBR items, which include things like net investment income, fees and also expenses. And a portion of these tailwinds are expected to persist into 2024. So, as we think about how the MBR pressure in 2023 then impacts 2024, as I mentioned, our 2024 MA bid contemplated higher MA utilization for outpatient and supplemental benefits, although the current experience exceeds the pricing provision.

As it specifically relates to OTC and flex cards, we recognized how customers value this benefit that it would be an important part of how we were going to market in 2024 in the sale of our products. And therefore, we proactively assumed higher utilization in those cards, which is much more consistent with how 2023 has actually played out. Consequently, 25 bps of the incremental 65 bps of the pressure this quarter was contemplated in pricing on account of the OTC and flex cards while the remaining 40 bps was not.

> So as you think then about that 40 bps of exposure, there's a couple of things that we think are offsets. First, as we progressed our stars mitigation and contract diversification efforts, we're now projecting that 2024 stars will be at the low – the impact will be at the low end of our expectations, or about $800 million versus the prior midpoint expectation of $900 million.
>
> Second, we've repriced our Individual Exchange members as we begin to move forward towards our target margins in 2024. The incremental Individual Exchange membership coming through SEP actually provides upside opportunity in 2024 as these members get properly documented for risk adjustments.
>
> Third, the net investment income tailwinds that we've seen will almost certainly persist in light of the current macro environment, which was not previously contemplated.
>
> And finally, we expect to achieve the high end of our enterprise cost reduction initiatives, which we previously talked about being $700 million to $800 million next year.
>
> All together, we believe these tailwinds can offset a meaningful portion of the incremental 2024 Medicare headwind, but we're encouraging investors to focus on the lower half of our 2024 guidance range until we understand where trends are going to stabilize.
>
> It's worth noting, out of an abundance of caution, we preserve the excess 2024 Medicare utilization provision that we talked about in the second quarter inside our updated guidance range for 2024.

52. The Company held its annual Investor Day on December 5, 2023. In a press release issued that day, CVS reiterated its guidance for 2023 and announced its guidance for 2024:

> **2023 Guidance**
> Today, the company is reiterating its 2023 guidance as shared on its November 1, 2023 earnings call:
>
> - Total revenues: $351.5 to $357.3 billion
> - Operating income: $13.6 to $14.0 billion
> - Adjusted operating income: $17.2 to $17.6 billion
> - GAAP diluted earnings per share ("EPS"): $6.37 to $6.61
> - Adjusted EPS: $8.50 to $8.70
> - Cash flow from operations: Upper-end of $12.5 to $13.5 billion
>
> **2024 Guidance**
> The company is initiating its 2024 full-year projections:

- Total revenues: At least $366.0 billion
- Operating income: At least $15.0 billion
- Adjusted operating income: At least $17.2 billion
- GAAP diluted EPS: At least $7.26
- Adjusted EPS: At least $8.50
- Cash flow from operations: At least $12.5 billion

53. On January 5, 2024, in a Form 8-K filed with the SEC, the Company announced guidance for 2023 and 2024. The Form 8-K stated:

> On January 8, 2024, members of the senior management team of CVS Health Corporation ("CVS Health," the "Company," "we" or "our") will meet with investors and will participate in a webcast at 10:30 a.m. (Eastern Time). During the meetings and webcast, the senior management team will reaffirm the Company's previously announced full-year 2023 GAAP diluted earnings per share ("EPS") guidance range of $6.37 to $6.61 and its full-year 2023 Adjusted EPS guidance range of $8.50 to $8.70. The Company expects its full-year 2023 Adjusted EPS to be in the upper half of the guidance range. In addition, the Company will reaffirm its full-year 2023 cash flow from operations guidance at the upper end of its $12.5 billion to $13.5 billion guidance range.
>
> The Company will reaffirm its previously announced full-year 2024 GAAP diluted EPS guidance of at least $7.26, its full-year 2024 Adjusted EPS guidance of at least $8.50 and its full-year 2024 cash flow from operations guidance of at least $12.5 billion.

54. On February 7, 2024, the Company released its financial results for the fourth quarter and full year 2023. The Company announced a 10.9% increase in total revenues for the year, with an 11.9% increase year-over-year for the fourth quarter. The Health Care Benefits segment announced an increase of 16.1% in revenues from the fourth quarter of 2022, and an increase of 15.6% in revenues from the full year 2022. According to the press release:

> - Total revenues increased 16.1% and 15.6% for the three months and year ended December 31, 2023, respectively, compared to the prior year driven by growth across all product lines.
> - Adjusted operating income decreased 26.0% for the three months ended December 31, 2023 compared to the prior year primarily driven by growth in the individual exchange business, including the related impact of seasonality, and increased utilization in Medicare Advantage. These decreases were partially offset by higher net investment income in the three months ended December 31, 2023 compared to the prior year.

- Adjusted operating income decreased 12.0% for the year ended December 31, 2023 compared to the prior year primarily driven by increased utilization in Medicare Advantage when compared with pandemic influenced utilization levels in the prior year, as well as incremental investments in the business, including investments in service capabilities and member experience. These decreases were partially offset by higher net investment income in the year ended December 31, 2023 compared to the prior year.

- The MBR increased from 85.8% to 88.5% in the three months ended December 31, 2023 compared to the prior year and increased from 83.8% to 86.2% in the year ended December 31, 2023 compared to the prior year. These increases were primarily driven by increased utilization in Medicare Advantage, including outpatient and supplemental benefits, when compared with pandemic influenced utilization levels in the prior year, as well as Commercial and Medicaid trends returning to normalized levels, consistent with pricing expectations.

- Medical membership as of December 31, 2023 of 25.7 million remained relatively consistent compared with September 30, 2023, as declines in the Medicaid product line were largely offset by increases in the Commercial and Medicare product lines.

- Medical membership as of December 31, 2023 of 25.7 million increased 1.3 million members compared with December 31, 2022, reflecting increases in the Commercial and Medicare product lines, including an increase of 1.3 million members related to the individual exchange business within the Commercial product line. These increases were partially offset by a decline in the Medicaid product line, primarily attributable to the resumption of Medicaid redeterminations following the expiration of the public health emergency in May 2023.

- The segment experienced favorable development of prior-periods' health care cost estimates in its Government Services and Commercial businesses during the three months ended December 31, 2023, primarily attributable to 2023 performance.

- Prior years' health care costs payable estimates developed favorably by $675 million during the year ended December 31, 2023. This development is reported on a basis consistent with the prior years' development reported in the health care costs payable table in the Company's annual audited financial statements and does not directly correspond to an increase in 2023 operating results.

55. The Company also announced that it had revised its guidance for 2024. As stated in the press release issued that day:

2024 Full-year guidance

The Company revised its full-year 2024 GAAP diluted EPS guidance to at least $7.06 from at least $7.26 and its full-year 2024 Adjusted EPS guidance to at least

> $8.30 from at least $8.50. The Company also revised its full-year 2024 cash flow from operations guidance to at least $12.0 billion from at least $12.5 billion.
>
> The Company's guidance revision follows a review of its recently finalized medical cost trend analysis for the fourth quarter of 2023 and the potential implications for elevated medical cost trends in 2024. Additional details of the guidance revision can be found in the Q4 2023 Earnings Presentation that can be found on the Investor Relations section of the CVS Health website at http://investors.cvshealth.com.
>
> The adjustments between full-year 2024 GAAP diluted EPS and Adjusted EPS include amortization of intangible assets, acquisition-related integration costs and the corresponding income tax benefit or expense related to the items excluded from adjusted income attributable to CVS Health.

56. That same day, CVS filed a Form 10-K with the SEC with the financial results for the fourth quarter and full year 2023. The Form 10-K stated:

> **Outlook**
>
> The Company believes you should consider the following key business and regulatory trends and uncertainties:
>
> ***Key Business Trends and Uncertainties***
>
> - Membership enrollment in Medicare Advantage plans exceeded expectations.
> - Utilization, particularly in Medicare Advantage programs, persisted at elevated levels into the end of 2023. At this time, the level of continued utilization is difficult to accurately predict.
> - The Company expects growth in its new Cordavis, Oak Street Health and Signify Health businesses.
> - Competitive pressures in the PBM industry have caused the Company to continue to share with clients a larger portion of rebates, fees and/or discounts received from pharmaceutical manufacturers. In addition, marketplace dynamics and regulatory changes have limited the Company's ability to offer plan sponsors pricing that includes retail network "differential" or "spread." The Company expects these trends to continue.
> - Competitive pressures in the retail pharmacy industry are increasing, resulting in aggressive generic pricing programs, the growth of discount cards and increased utilization of digital commerce.
> - Future costs are influenced by a number of factors including competitive demand for products and services, legislative and regulatory considerations, and

labor and other market dynamics, including inflation. We evaluate and adjust our approach in each of the markets we serve, considering all relevant factors.

- The Company expects benefits from enterprise-wide cost savings initiatives and investments in efficiencies, which aim to reduce the Company's operating cost structure in a way that improves the consumer experience and is sustainable.

Key Regulatory Trends and Uncertainties

- The Company is exposed to funding and regulation of, and changes in government policy with respect to and/or funding or regulation of, the various Medicare programs in which the Company participates, including changes in the amounts payable to us under those programs and/or new reforms or surcharges on existing programs, including changes to applicable risk adjustment mechanisms.

- Legislation and/or regulations seeking to regulate PBM activities in a comprehensive manner have been proposed or enacted in a majority of states and on the federal level. This legislative and regulatory activity could adversely affect the Company's ability to conduct business on commercially reasonable terms and the Company's ability to standardize its PBM products and services across state lines.

* * *

Adjusted operating income

- Adjusted operating income decreased $761 million, or 12.0%, in 2023 compared to 2022. The decrease in adjusted operating income was primarily driven by increased utilization in Medicare Advantage when compared with pandemic influenced utilization levels in the prior year, as well as incremental investments in the business, including investments in service capabilities and member experience. These decreases were partially offset by higher net investment income in 2023 compared to 2022.

* * *

Medicare Update

On March 31, 2023, CMS issued its final notice detailing final 2024 Medicare Advantage payment rates. Final 2024 Medicare Advantage rates resulted in an expected average decrease in revenue for the Medicare Advantage industry of 1.12%, excluding the CMS estimate of Medicare Advantage risk score trend. On January 31, 2024, CMS issued an advance notice detailing proposed 2025 Medicare Advantage payment rates. The 2025 Medicare Advantage rates, if finalized as proposed, will result in an expected average decrease in revenue for the Medicare Advantage industry of 0.16%, excluding the CMS estimate of Medicare Advantage risk score trend. CMS intends to publish the final 2025 rate announcement no later than April 1, 2024.

> The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 ties a portion of each Medicare Advantage plan's reimbursement to the plan's "star ratings." Plans must have a star rating of four or higher (out of five) to qualify for bonus payments. CMS released the Company's 2024 star ratings in October 2023. The Company's 2024 star ratings will be used to determine which of the Company's Medicare Advantage plans have ratings of four stars or higher and qualify for bonus payments in 2025.
>
> On October 13, 2023, CMS released its 2024 star ratings for Medicare Advantage and PDPs. Based on the 2024 star ratings, which will impact total revenues in 2025, the percentage of Aetna Medicare Advantage members in 4+ star plans is expected to return to 87% based on the Company's membership as of December 2023, as compared to the unmitigated 21% in the prior year. The main driver of this increase was a half star improvement in the Aetna National preferred provider organization ("PPO") plan, which increased from 3.5 stars to 4.0 stars. As previously discussed, the decline in membership in 4+ star plans for payment year 2024 resulted in a mitigated 2024 headwind of approximately $800 million to $1.0 billion, which was primarily driven by the decrease of the Aetna National PPO plan from 4.5 stars to 3.5 stars. Based on the increase in membership in 4+ star plans for payment year 2025, the Company now expects to be eligible for bonus payments in 2025 that will recover the majority of the 2024 revenue decrease described above. The Company expects to prudently reinvest a portion of this net improvement into its business.

57. CVS held a conference call with investors and analysts on February 7, 2024 to discuss the financial results released that day. In her opening remarks, Defendant Lynch stated:

> This morning, we revised our full-year 2024 guidance for adjusted EPS to at least $8.30 and cash flow from operations to at least $12 billion. While utilization pressure in Medicare Advantage continues to be attributable to the same categories we have previously highlighted, a part of which was contemplated in our 2024 guidance, we are taking a cautious stance on our outlook for Medicare Advantage utilization until we have further clarity of these industry-wide trends. Tom will provide additional details on the components of our guidance.
>
> While the Medicare Advantage market has been challenged recently, our view of the long-term opportunity offered by this business remains unchanged. As we discussed in December, we are committed to achieving our targeted 4% to 5% margins in Medicare Advantage over time, and we will begin that journey in 2025.
>
> * * *
>
> In our Health Care Benefits segment, we continue to navigate through elevated utilization trends in our Medicare Advantage business. In the quarter, we grew revenues to nearly $27 billion, an increase of over 16%, and delivered adjusted operating income of $676 million. Medical membership ended the year at 25.7

million, an increase of 1.3 million members versus the prior year, reflecting growth across multiple product lines, including individual exchange, Medicare and commercial.

Medicare Advantage is integral to the CVS Health strategy. After a very successful 2024 annual enrollment period, we expect to add at least 800,000 new members in 2024. Our success was driven by targeted investments that were strengthened by CVS Health assets and allowed us to create differentiated value for members. We are improving member experiences by focusing on simplicity, offering unique designs, and maintaining stable networks.

Last week we received the proposed 2025 rate notice. The funding level was broadly consistent with our expectation, which we do not believe is sufficient to cover current medical cost trends. We believe that the changes to Part D as a consequence of the Inflation Reduction Act necessitate additional funding to cover the comprehensive member benefits provided, and the increased risk that plans are assuming as a result of the redesign. We look forward to providing our comments to CMS in the coming weeks.

58. In his opening remarks, Defendant Cowhey stated:

Fourth quarter revenues of nearly $94 billion increased by nearly 12% over the prior-year quarter, reflecting strong growth across each of our businesses. We delivered adjusted operating income of approximately $4.2 billion and adjusted EPS of $2.12, representing growth of approximately 4% versus the prior year. These increases were primarily due to strong results in our Pharmacy & Consumer Wellness and Pharmacy Services businesses, as well as lower corporate expenses, partially offset by continued pressure in Health Care Benefits. Our ability to generate cash remains outstanding with full-year cash flow from operations of $13.4 billion.

Shifting to details for our Healthcare Benefits segment, we delivered another strong quarter of revenue growth versus the prior year. Fourth quarter revenue of $26.7 billion increased more than 16% year-over-year, reflecting growth across all product lines, particularly in our individual exchange and Medicare businesses. Membership was 25.7 million, a slight decrease of 29,000 members sequentially, reflecting the impact of Medicaid redeterminations, partially offset by growth in individual exchange.

Adjusted operating income for the fourth quarter was $676 million. The decline in adjusted operating income versus the prior year was primarily driven by growth in the individual exchange business, including the related impact of seasonality, and increased utilization in Medicare Advantage, partially offset by higher net investment income.

Our medical benefit ratio of 88.5% increased 270 basis points from the prior-year quarter primarily reflecting higher Medicare Advantage utilization and a lower contribution from positive prior-period developments. Utilization pressure continues to be attributable to the same categories we highlighted in the previous quarter, including outpatient and supplemental benefits such as dental and vision. We also saw an uptick in costs related to seasonal immunizations, including the newly launched RSV vaccine. Other categories remain largely consistent with our previous medical cost trend assumptions.

* * *

Turning now to our full-year outlook for 2024. In recognition of the marketplace uncertainty around utilization trends in Medicare Advantage, we revised our 2024 adjusted EPS guidance to at least $8.30.

In the Health Care Benefits segment, we now expect our 2024 medical benefit ratio to be approximately 87.7%, an increase of 50 basis points from our previous guidance. As I already noted, we observed elevated medical cost trends in our Medicare Advantage business in the fourth quarter which pressured our full year 2023 medical benefit ratio by approximately 10 basis points relative to our prior guidance. The remaining pressure in the quarter was largely a function of mix and higher revenue offsets than we previously projected.

Based on our review of our recently completed fourth quarter 2023 medical cost trend analysis, we are prudently assuming that the elevated medical cost trends we observed in the fourth quarter will carry forward into 2024. Accordingly, we have increased our full-year 2024 MBR guidance by approximately 40 basis points to account for this pressure.

As discussed throughout 2023, we have included a provision for elevated utilization in our 2024 medical benefit ratio guidance and will continue to hold that provision until we have more clarity on the Medicare Advantage utilization environment.

Our revised outlook also reflects an expectation of at least 800,000 new Medicare Advantage members in 2024. As we have previously discussed, the profile of these new members is attractive with nearly three-quarters of these members switching from other Medicare plans and about one-third of members expected in D-SNP plans.

We continue to expect these new members will be neutral to earnings, but the mix impact from incremental new membership represents approximately 10 basis points of today's 2024 MBR guidance revision. When combined with the additional 40 basis points of medical cost pressure we are projecting, we have increased our 2024 MBR projection by 50 basis points to 87.7%.

> We anticipate a number of favorable items will partially offset the impact of the expected elevated utilization levels, including higher investment income and higher than previously projected commercial membership. Adding up all the pieces, we now expect adjusted operating income for the Health Care Benefits segment to be at least $5.4 billion, a decrease of $370 million from our prior estimates.
>
> * * *
>
> As you think about the cadence of earnings in 2024, we expect to generate less than 50% of our adjusted EPS in the first half. More specifically, we expect to generate roughly 20% of full-year adjusted EPS in the first quarter. This pattern will look different than 2023, primarily due to the way Medicare Advantage utilization emerged over the course of 2023 and the timing and impact of prior-period developments.
>
> As a result, Health Care Benefits 2024 MBR will see the largest year-over-year increase in the first quarter and the smallest in the fourth quarter.

59. When asked about how the results for the fourth quarter of 2023 impact guidance for 2024, Defendant Cowhey responded:

> As we look across the other categories, the cost trends themselves on a dollar basis, they're essentially in line with where it is that we thought that they would be. So how does that translate then into 2024? We've taken that 10 basis points of pressure and we've pulled it through into the 2024 baseline. So accordingly, we've increased our estimate for medical costs by over $400 million in our forward guidance for 2024.
>
> With the additional mix impacts from the new members, that additional 200,000 plus that we've talked about since Investor Day, we think that that gets you to about a 50-basis-point increase, which is the totality of what we've done this morning. As I said in the prepared remarks, I'd just remind you, when we first started talking about our guidance for 2024 at the second quarter call, we talked about putting an additional provision into 2024 for enhanced utilization. We've maintained that provision in our guidance. And so we hope that that will be a prudent posture, but we want to see where trends are going to settle.

60. In response to a later question about increased utilization leading to higher medical costs, Defendant Cowhey stated:

> So as you look at the year-over-year MBR increase, almost the entirety of it is related to the Medicare Advantage business. So there's some smaller items. So we have an improvement in our individual exchange business, and then there's some other offsets there. But we also, as we think about our guidance, we never project prior-year reserve development. And so those two for the most part net.

> And so, what you are left with is the vast majority of the increase is related to Medicare. And so about 65 basis points of that specifically relates to the $800 million stars headwinds that we have. And then the remainder is a combination of provisions for the new member mix, because we're assuming the higher MBR there, and that that will be plus or minus breakeven. And then the rest of it is really a provision for Medicare utilization pressure.

61. Defendant Cowhey attended the Raymond James Institutional Investors Conference on March 5, 2024, and spoke in a fireside chat with an analyst there. During their discussion, Defendant Cowhey stated:

> We priced for 2024, as we always do, in the first week of June. And so, as you think about that cascade of claims, plus the time that it takes to process all the bids in all the counties that we're making, you're making your forward assumptions on trend based on paid claims through the first quarter, a little bit of the second, but not a ton of visibility on some of those later months in the second quarter.
>
> And that's exactly when we really started to see trend accelerate, right? So, that's where we started to see pressure. Some of that pressure manifested itself on the first quarter through the run-out periods. But then, in the second and third and we saw elevated trends into the fourth.
>
> And those trends, when we made our bet in June of 2023 on what would be the remainder of trend for 2023 and what would it look like in 2024, we made assumptions about enhanced utilization as we typically do. And we've seen a lot more pressure than we otherwise would have projected at that point in time. And so, that pressured results in 2023. That will continue to pressure results in 2024 and that's fully reflected in our guidance.

62. The foregoing statements were materially false and misleading, and failed to disclose materially adverse facts about the Company's business and operations. Specifically, the statements failed to disclose that: (a) CVS had understated the impact of increased utilization on the Health Care Benefits segment's financial performance; (b) given the enormous impact of medical costs on the Health Care Benefit segment's financial results, the increased utilization and increased medical costs would not be offset by other financial gains within the segment; (c) the financial performance of other business segments could not offset the impact of increased

utilization in the Health Care Benefits segment; and (d) the Company had not fully accounted for the impact of increased utilization on the Health Care Benefits segment or the Company as a whole.

C. The Truth is Revealed

63. On May 1, 2024, the Company released its financial results for the first quarter of 2024. The Company announced a slight increase in total revenues from the first quarter of 2023. Operating income decreased more than 34%, which the Company attributed to declines in the Health Care Benefits segment. The Health Care Benefits segment saw an increase in revenues of 24.6% compared to the first quarter of 2023. According to the press release issued that day:

- Total revenues increased 24.6% for the three months ended March 31, 2024 compared to the prior year driven by growth in the Medicare and Commercial product lines.
- Adjusted operating income decreased 59.9% for the three months ended March 31, 2024 compared to the prior year primarily driven by increased Medicare utilization, the unfavorable impact of the previously disclosed decline in the Company's 2024 Medicare Advantage star ratings, as well as an unfavorable year-over-year impact of prior-year development. These decreases were partially offset by increased volume due to growth in the Medicare and Commercial product lines, an increase in net investment income and improved fixed cost leverage across the business due to membership growth.
- The MBR increased to 90.4% in the three months ended March 31, 2024 compared to 84.6% in the prior year driven by increased Medicare utilization, the unfavorable impact of the Company's 2024 Medicare Advantage star ratings, the unfavorable year-over-year impact of prior-year development, as well as the impact of an additional day in 2024 due to the leap year.
- Medical membership as of March 31, 2024 of 26.8 million increased 1.1 million members compared with December 31, 2023, reflecting increases in the Medicare and Commercial product lines, including an increase of 493,000 members related to the individual exchange business within the Commercial product line. These increases were partially offset by a decline in the Medicaid product line.
- Prior years' health care costs payable estimates developed favorably by $473 million during the three months ended March 31, 2024. This development is reported on a basis consistent with the prior years' development reported in the health care costs payable table in the Company's annual audited financial statements and does not directly correspond to an increase in 2024 operating results.
- Days claims payable were 44.5 days as of March 31, 2024, a decrease of 1.4 days compared to December 31, 2023. The decrease was primarily driven by

> the impact of membership growth, higher pharmacy trends, as well as the number of days in each quarter.

64. The Company also announced that it had revised its guidance for 2024. As stated in the press release issued that day:

> **2024 Full-year guidance**
>
> The Company revised its full-year 2024 GAAP diluted EPS guidance to at least $5.64 from at least $7.06 and its full-year 2024 Adjusted EPS guidance to at least $7.00 from at least $8.30. The Company also revised its full-year 2024 cash flow from operations guidance to at least $10.5 billion from at least $12.0 billion.
>
> The Company's guidance revision reflects the assumption that the majority of utilization pressure observed in the Health Care Benefits segment during the first quarter will persist throughout 2024. Additional details of the guidance revision can be found in the Q1 2024 Earnings Presentation that can be found on the Investor Relations section of the CVS Health website at http://investors.cvshealth.com.
>
> The adjustments between full-year 2024 GAAP diluted EPS and Adjusted EPS include amortization of intangible assets, net realized capital losses, acquisition-related integration costs, opioid litigation charges and the corresponding income tax benefit or expense related to the items excluded from adjusted income attributable to CVS Health.

65. On this news, CVS's stock fell more than 17% from a closing price of $67.71 on April 30, 2024, to close at $55.90 on May 3, 2024, after days of unusually high trading.

D. Defendants' Misconduct Has and Continues to Harm the Company

66. As a direct and proximate result of the Defendants' conduct, the Company has been harmed and will continue to be. The harm includes, but is not limited to, the costs already incurred and to be incurred defending the Company in the securities class actions *Nixon v. CVS Health Corporation, et al.*, 1:214-cv-05303 (S.D.N.Y.) and *Tatone v. CVS Health Corporation, et al.*, 1:24-cv-06771 (S.D.N.Y.), as well as costs to be incurred in remediating deficiencies in the Company's internal controls.

67. CVS's reputation and goodwill have also been damaged by the Defendants' misconduct. Numerous analysts downgraded the Company's stock after the release of the first

quarter of 2024 financial results. Leerink analyst Michael Cherny stated that the significant reduction in guidance for 2024 raised questions about the Company's ability to reach double-digit growth in earnings per share in 2025.

E. CVS Issues a False and Misleading Proxy Statement

68. In addition to the false and misleading statements discussed above, Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro also caused the Company to issue a false and misleading proxy statement, the Schedule 14A Proxy Statement filed on April 5, 2024 (the "2024 Proxy") that sought stockholder votes to, among other things, re-elect Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro to serve on the Board.

69. Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro drafted, approved, reviewed, and/or signed the 2024 Proxy before it was filed with the SEC and disseminated to CVS's stockholders. Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro negligently issued materially misleading statements in the 2024 Proxy. These allegations are based solely on negligence, they are not based on any allegations of recklessness or knowing conduct by or on behalf of Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro and they do not allege or do not sound in fraud. Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or reference or any allegation of fraud, scienter, or recklessness with regard to the 2024 Proxy allegations and related claims.

70. In support of re-electing themselves, Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro highlighted their supposed oversight of the Company in the 2024 Proxy. The 2024 Proxy stated:

> The Board's role in risk oversight involves both the full Board and its committees, as well as members of management.
>
> **The Board's risk oversight function:**
> - The Board focuses on understanding Company-wide risks and ensuring that risk matters are appropriately brought to the Board and/or its committees for review.
> - The Board ensures that the Corporate Governance Guidelines, the Board's leadership structure and the Board's practices facilitate the effective oversight of risk and communication with management.
> - The Board received regularly updates on specific risks in the course of its review of corporate strategy, business plans and reports to the Board by its respective committees.
>
> The Board considers its role in risk oversight when evaluating the Company's Corporate Governance Guidelines and the Board's leadership structure. Both the Corporate Governance Guidelines and the Board's leadership structure facilitate the Board's oversight of risk and communication with management. Our Independent Chair and our CEO are focused on CVS Health's and the Board's risk management efforts and ensure that risk matters are appropriately brought to the Board and/or its committees for their review.
>
> **Risk Oversight Framework**
>
> **Full Board and Committees**
>
> The Company believes that its Board leadership structure supports the Board's oversight function. The Board implements its risk oversight function both as a whole and through delegation to Board committees, which meet regularly and report back to the Board, as appropriate. Each of the Board's standing committees is responsible for oversight of risk management practices for categories of risks relevant to their functions. Each of the Board committees can engage advisors and experts as the committee deems necessary in connection with its risk oversight responsibilities.
>
> **Audit Committee**

The Audit Committee is the primary committee charged with carrying out risk oversight responsibilities on behalf of the Board, including reviewing financial, operational, compliance, reputational and strategic risks and developing steps to monitor, manage and mitigate those risks. The Audit Committee annually reviews the Company's policies and practices with respect to risk assessment and risk management, including discussing with management, the Company's independent registered public accounting firm and the Company's internal auditors the Company's major financial risk exposures and the steps that have been taken to monitor and mitigate such exposures.

Beginning in March 2024, the Audit Committee began overseeing our information governance framework, including our privacy and information security programs, as well as the cybersecurity aspects of our information security program and cybersecurity risk exposures. The N&CG Committee previously oversaw risks related to cybersecurity and data and information security governance and the I&F Committee previously reviewed risks related to the Company's investment portfolio and its capital and financial resources, which are now reviewed by the Audit Committee.

MP&D Committee
The MP&D Committee has oversight responsibility for the Company's overall compensation structure, including review of its compensation practices, with a view to assessing associated risk. See "Compensation Risk Assessment" beginning on page 37 for additional information.

N&CG Committee
The N&CG Committee oversees several other types of environmental, social and governance-related risks and in 2023 oversaw risks related to cybersecurity and data and information security governance, which transitioned to the Audit Committee in 2024 as described on pages 32-33.

HS&T Committee (formerly the Medical Affairs Committee)
The HS&T Committee reviews and assesses risks arising from the Company's provision of health care services and the steps taken to identify, monitor and mitigate those risks. It also oversees matters concerning advancing the quality of pharmacy and medical care, patient safety and experience and in 2024, assumed oversight of the health, safety and environment program and technology investments and developments across the enterprise.

71. The 2024 Proxy thus assured stockholders that Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro

understood Company-wide risks, actively oversaw the Company's risks and exposures, as well as steps taken to monitor and mitigate risk exposures. In reality, Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro were utterly failing in their oversight duties by allowing the Company to operate with inadequate internal controls which resulted in the failure to disclose or prevent the Defendants from causing the Company to make materially false and misleading statements concerning the impact of increased utilization rates, which lead to increased medical costs, on the financial performance of the Health Care Benefits segment, and the inability of CVS's other business segments to offset that impact.

72. As a result of these misleading statements, the Company's stockholders voted via an uninformed stockholder vote to re-elect Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro to the Board.

F. The Board Breached its Fiduciary Duties

73. As officers and/or directors of CVS, the Defendants owed CVS fiduciary duties of good faith, loyalty, and candor, and were and are required to use their utmost ability to control and manage CVS in a fair, just, honest and equitable manner. The conduct of the Director Defendants involves a knowing or reckless violation of their obligations as directors and officers of CVS, the absence of good faith on their part, and a reckless disregard for their duties to the Company that Director Defendants were aware or should have been aware posed a risk of serious injury to the Company.

74. Defendants, because of their positions of control and authority as directors and/or officers of CVS, were able to and did exercise control over the wrongful acts complained of herein. As officers and/or directors of a publicly-traded company, the Defendants had a duty to prevent

the dissemination of inaccurate and untruthful information regarding CVS's financial condition, performance, growth, operations, financial statements, business, management, earnings, internal controls, and business prospects, so as to ensure that the market price of the Company's common stock would be based upon truthful and accurate information.

75. To discharge their duties, the officers and directors of CVS were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors and CVS were required to, among other things:

(a) Ensure that the Company complied with its legal obligations and requirements, including acting only within the scope of its legal authority and disseminating truthful and accurate statements to the SEC and the Company's stockholders;

(b) Conduct the affairs of the Company in a lawful, efficient, business-like manner to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(c) Refrain from unduly benefiting themselves and other Company insiders at the expense of the Company;

(d) Oversee public statements made by the Company's officers and employees as to the financial condition of the Company at any given time, including ensuring that any statements about the Company's financial results and prospects are accurate, and ensuring that the Company maintained an adequate system of financial controls such that the Company's financial reporting would be true and accurate at all times;

(e) Remain informed as to how the Company conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with federal and state securities laws;

(f) Maintain and implement an adequate and functioning system of internal controls to ensure that the Company complied with all applicable laws, rules, and regulations; and

(g) Ensure that the Company is operated in a diligent, honest, and prudent manner in compliance with all applicable federal, state, and local laws, rules and regulations.

76. The conduct of the Defendants complained of herein involves a knowing and culpable violation of their obligations as officers and directors of the Company, the absence of good faith on their part, or a reckless disregard for their duties to the Company and its stockholders, which the Defendants were aware, or should have been aware, posed a risk of serious injury to the Company.

77. The Board's Audit Committee is tasked with overseeing the integrity of CVS's financial statements and compliance with laws and regulations. Specifically, according to the Audit Committee's charter, the Audit Committee's responsibilities include:

- The Committee shall meet to review and discuss with management, the internal auditors and the independent auditor, in separate meetings if the Committee deems it appropriate:
  - the annual audited financial statements, including the Company's specific disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations", prior to the filing of the Company's Form 10-K;
  - the quarterly financial statements, including the Company's specific

disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations", prior to the filing of the Company's Form 10-Q;

- analyses or other written communications prepared by management and/or the independent auditor setting forth significant judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements and estimates made by management having a material impact on the financial statements;
- the critical accounting policies and practices of the Company;
- critical audit matters disclosed in the independent auditor's reports;
- off-balance sheet transactions and structures;
- the Company's regulated capital investment portfolio; and
- the effect of regulatory and accounting initiatives or actions applicable to the Company (including any SEC investigations or proceedings) and any significant accounting, reporting, regulatory and other developments affecting the Company's annual and quarterly financial statements, related footnotes and related disclosures.

- The Committee shall review, in conjunction with management, the Company's earnings press releases and to the type of financial information and earnings guidance provided to analysts and rating agencies, paying particular attention to the use of non-GAAP financial information.

- The Committee shall review, in conjunction with management, the financial and other metrics presented in the Company's environmental, social and governance ("ESG") disclosures included as part of the Company's reports to be filed with the SEC, along with the assurance processes and the internal and disclosure controls and procedures for such ESG disclosures.

- The Committee shall, in conjunction with the Chief Executive Officer (the "CEO") and CFO of the Company, at least annually, review and approve the Company's disclosure controls and procedures and also review the effectiveness of the Company's internal controls over financial reporting. The review of internal controls over financial reporting shall include whether there are any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting that are reasonably likely to affect the Company's ability to record, process, summarize and report financial information, and any fraud involving management or other employees with a significant role in internal control over financial reporting. The Committee shall also review any special audit steps adopted in light of material control deficiencies.

78. In violation of the Audit Committee Charter, and their general duties as members of the Audit Committee, Defendants Aguirre, Balser, DeCoudreaux, Finucane, Millon, and Schapiro conducted little, if any, oversight of the Company's internal controls over financial reporting, resulting in materially false and misleading statements regarding the Company's business and consciously disregarded their duties to monitor such controls. The Audit Committee's complete failure to perform their duties in good faith resulted in misrepresentations to the public and the Company's stockholders.

79. In addition, as officers and directors of a publicly-traded company whose common stock was registered with the SEC pursuant to the Exchange Act, the Defendants had a duty not to effect the dissemination of inaccurate and untruthful information with respect to the Company's financial condition, performance, growth, operations, financial statements, business, products, management, earnings, internal controls, and present and future business prospects, so that the market price of the Company's common stock would be based upon truthful and accurate information. Accordingly, the Defendants breached their fiduciary duties by knowingly or recklessly causing the Company to make false and misleading statements of material fact about the Company's maintaining adequate internal controls and compliance with applicable rules and regulations.

80. The Defendants' flagrant violations of their fiduciary duties and unwillingness to heed the requirements of their Audit Committee Charter have inflicted, and will continue to inflict, significant harm on CVS.

DERIVATIVE ALLEGATIONS

81. Plaintiff brings this action derivatively in the right and for the benefit of CVS to redress injuries suffered by CVS as a direct result of the Director Defendants' breaches of fiduciary

duty. CVS is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

82. Plaintiff will adequately and fairly represent the interests of CVS in enforcing and prosecuting the Company's rights.

83. Plaintiff was a stockholder of CVS at the time of the wrongdoing complained of, has continuously been a stockholder since that time, and is currently a CVS stockholder.

DEMAND FUTILITY ALLEGATIONS

84. Plaintiff repeats, re-alleges, and incorporates by reference each and every allegation set forth as though fully set forth herein.

85. The CVS Board currently has 12 members: Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro.

86. Plaintiff has not made any demand on CVS's current Board to institute this action against the Director Defendants, as any pre-suit demand would be excused. The Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

A. Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro Lack Independence Because They Face a Substantial Likelihood of Liability

87. As alleged above, Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro breached their fiduciary duties by negligently issuing the materially false and misleading 2024 Proxy soliciting the reelection of themselves to the Board. Accordingly, Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro face a substantial likelihood of

negligence liability for issuing the 2024 Proxy and any demand upon these defendants is therefore futile.

88. Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro face a substantial likelihood of liability for their individual misconduct. As alleged above, Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro breached their fiduciary duties by allowing the Company to issue the materially false and misleading statements described above. Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro had a duty to ensure that the Company's SEC filings, press releases, and other public statements and presentations concerning its business, operations, prospects, internal controls, and financial statements were accurate.

89. In addition, Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro owed a duty to, in good faith and with due diligence, exercise reasonable inquiry, oversight, and supervision to ensure that the Company's internal controls were sufficiently robust and effective (and/or were being implemented effectively), and to ensure that the Board's duties were being discharged in good faith and with the required diligence and due care. Instead, the Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro knowingly and/or with reckless disregard reviewed, authorized, and/or caused the publication of the materially false and misleading statements discussed above that caused the Company's stock to trade at artificially inflated prices and misrepresented the financial health of CVS.

90. Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro making or authorization of these false and

misleading statements, failure to timely correct such statements, failure to take necessary and appropriate steps to ensure that the Company's internal controls were sufficiently robust and effective (and/or were being implemented effectively), and failure to take necessary and appropriate steps to ensure that the Board's duties were being discharged in good faith and with the required due diligence constitute breaches of fiduciary duties that have resulted in Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro facing a substantial likelihood of liability. If Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro were to bring a suit on behalf of CVS to recover damages sustained as a result of this misconduct, they would expose themselves and their colleagues to significant liability. For this reason, demand is futile as to Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro.

B. Defendant Lynch is not Independent

91. Defendant Lynch is an executive officer of and currently employed by CVS. Defendant Lynch received compensation of $21.6 million in 2023, $21.3 million in 2022, and $20.3 million in 2021. Defendant Lynch thus depends on CVS for her income. In addition, CVS stated in the 2024 Proxy that Defendant Lynch is not independent because of her employment as President and CEO of CVS.

C. Defendants Aguirre, Balser, DeCoudreaux, Finucane, Millon, and Schapiro are not Disinterested Because They Were Members of the Committee Responsible for Overseeing Financial Reporting

92. The Audit Committee oversees the Company's financial disclosures and its compliance with relevant laws and regulations. One of the Audit Committee's responsibilities is to review quarterly and annual financial statements, as well as earnings press releases, and financial

information disclosed to analysts, rating agencies, and other Company reports. The Audit Committee was thus responsible for reviewing and approving CVS's Forms 10-Q and 10-K filed between May 3, 2023, and April 30, 2024. Defendants Aguirre, Balser, DeCoudreaux, Finucane, Millon, and Schapiro were members of the Audit Committee during the relevant time period and were thus responsible for knowingly or recklessly allowing the improper statements related to the Company's earnings guidance and financial and disclosure controls. Through their knowledge or reckless disregard, Defendants Aguirre, Balser, DeCoudreaux, Finucane, Millon, and Schapiro caused improper statements by the Company. Accordingly, Defendants Aguirre, Balser, DeCoudreaux, Finucane, Millon, and Schapiro breached their fiduciary duty of loyalty and good faith because they participated in the misconduct described above. They face a substantial likelihood of liability for these breaches, making any demand on them futile.

93. Based on the facts alleged herein, there is a substantial likelihood that Plaintiff will be able to prove that these individuals breached their fiduciary duties by condoning the misconduct and failing to take meaningful action to remedy the resultant harm.

CLAIMS FOR RELIEF

COUNT I
Breach of Fiduciary Duty
(Derivatively Against The Director Defendants)

94. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

95. Each of the Defendants owed and owes CVS the highest obligations of loyalty, good faith, due care, and oversight.

96. Each of the Defendants violated and breached their fiduciary duties of loyalty, good faith, candor and oversight to the Company.

97. The Director Defendants' conduct set forth herein was due to their intentional or reckless breach of the fiduciary duties they owed to the Company. In breach of their fiduciary duties, the Director Defendants failed to maintain an adequate system of oversight, disclosure controls and procedures, and internal controls.

98. In addition, the Director Defendants further breached their fiduciary duties owed to CVS by willfully or recklessly making and/or causing the Company to make false and misleading statements and omissions of material fact and allowing the Company to operate with inadequate internal controls, which resulted in the misrepresentations and failure to disclose the impact of increased utilization rates, which lead to increased medical costs, on the financial performance of the Health Care Benefits segment, and the inability of CVS's other business segments to offset that impact.. The Director Defendants failed to correct and cause the Company to fail to rectify any of the wrongs described herein or correct the false and misleading statements and omissions of material fact, exposing them to personal liability to the Company for breaching their fiduciary duties.

99. The Director Defendants had actual or constructive knowledge that they had caused the Company to improperly engage in the wrongdoing set forth herein and to fail to maintain adequate internal controls. The Director Defendants had actual knowledge that the Company was engaging in the wrongdoing set forth herein, and that internal controls were not adequately maintained, or acted with reckless disregard for the truth, in that they caused the Company to improperly engage in the wrongdoing and to fail to maintain adequate internal controls, even though such facts were available to them. Such improper conduct was committed knowingly or recklessly and for the purpose and effect of artificially inflating the price of the Company's

securities. The Director Defendants, in good faith, should have taken appropriate action to correct the schemes alleged herein and to prevent them from continuing to occur.

100. As a direct and proximate result of the breaches of duty alleged herein, CVS has sustained and will sustain significant damages.

101. As a result of the misconduct alleged herein, these Defendants are liable to the Company.

102. Plaintiff, on behalf of CVS, has no adequate remedy at law.

COUNT II
Breach of Fiduciary Duty
(Derivatively Against the Officer Defendants)

103. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

104. The Officer Defendants are executive officers of the Company. As executive officers, The Officer Defendants owed and owe CVS the highest obligations of loyalty, good faith, due care, oversight, and candor.

105. The Officer Defendants breached their fiduciary duties owed to CVS by willfully or recklessly making and/or causing the Company to make false and misleading statements and omissions of material fact, failing to disclose the impact of increased utilization rates, which lead to increased medical costs, on the financial performance of the Health Care Benefits segment, and the inability of CVS's other business segments to offset that impact. The Officer Defendants failed to correct and cause the Company to fail to rectify any of the wrongs described herein or correct the false and misleading statements and omissions of material fact.

106. As a direct and proximate result of the breaches of duty alleged herein, CVS has sustained and will sustain significant damages.

107. As a result of the misconduct alleged herein, the Officer Defendants are liable to the Company.

108. Plaintiff, on behalf of CVS, has no adequate remedy at law.

COUNT III
Violation of Section 14(a) of the Exchange Act
(Against Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro)

109. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

110. The section 14(a) Exchange Act claims alleged herein are based solely on negligence. They are not based on any allegation of reckless or knowing conduct by or on behalf of Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro. The section 14(a) Exchange Act claims detailed herein do not allege and do not sound in fraud. Plaintiff specifically disclaims any allegation of, reliance upon any allegation of, or reference to any allegation of fraud, scienter, or recklessness with regard to the nonfraud claims.

111. Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro negligently issued, caused to be issued, and participated in the issuance of materially misleading written statements to stockholders which were contained in the 2024 Proxy. In the 2024 Proxy, the Board solicited stockholder votes to reelect Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro to the Board.

112. The 2024 Proxy, however, misrepresented and failed to disclose the Board's risk oversight and the Company's inadequate internal controls, which facilitated the illegal behavior described herein. By reasons of the conduct alleged herein, Defendants Lynch, Aguirre, Balser,

Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro violated section 14(a) of the Exchange Act. As a direct and proximate result of these defendants' wrongful conduct, CVS misled and deceived its stockholders by making materially misleading statements that were essential links in stockholders following the Company's recommendation and voting to reelect Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro.

113. Plaintiff, on behalf of CVS, thereby seeks relief for damages inflicted upon the Company based upon the misleading 2024 Proxy in connection with the improper reelection of Defendants Lynch, Aguirre, Balser, Brown, DeCoudreaux, DeParle, Farah, Finucane, Kirby, Mahoney, Millon, and Schapiro to the Board.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

A. Declaring that Plaintiff may maintain this derivative action on behalf of CVS and that Plaintiff is a proper and adequate representative of the Company;

B. Against all of the Defendants and in favor of CVS for the amount of damages sustained by the Company as a result of the acts and transactions complained of herein;

C. Granting appropriate equitable relief to remedy the Defendants' breaches of fiduciary duties, including, but not limited to the institution of appropriate corporate governance measures;

D. Awarding CVS restitution from Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by Defendants;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and expert fees and expenses; and

F. Granting such other and further equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: October 7, 2024

MOTLEY RICE LLC

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